

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

HARRY J. WILLIBY,

Plaintiff,

No. CIV S-04-2560 RRB JFM P

vs.

JEANNE S. WOODFORD, et al.,

Defendants.

ORDER

Plaintiff is a former state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. On June 5, 2007, plaintiff filed a motion to compel discovery and for sanctions pursuant to Fed. R. Civ. P. 37. Plaintiff contends that on April 13, 2007, he served defendants with interrogatories, a request for admissions, and request for production of documents, and that defendants have failed to respond to any of the discovery requests. Plaintiff seeks an order compelling defendants to respond and payment of \$450.00 in monetary sanctions. Defendants oppose the motion on the ground that there is no proof that plaintiff's discovery requests were properly served by mail on defendants on April 13, 2007.

Plaintiff has attached to his motion a copy of each of the discovery requests at issue. Appended to each request is a certificate of service signed on April 13, 2007 by an individual identified as Felton E. Maxie. Defendants have presented evidence that they did not

1 receive the discovery requests at issue until June 11, 2007, and that the certificates of service
2 appended to the discovery requests received on that date were unsigned. See Declaration in
3 Opposition to Plaintiff's Motion to Compel Discovery, filed June 25, 2006, at 2, and Attachment
4 1 thereto. With his reply brief, in relevant part plaintiff presents several receipts from a post
5 office in Oakland, California. None of the receipts presented are for mailing on April 13, 2007.
6 See Ex. A to Plaintiff's Reply, filed July 5, 2007.

7 The court makes no findings with respect to plaintiff's contention that he properly
8 mailed the discovery requests at issue to defendants on April 13, 2007. The court finds that
9 defendants have presented sufficient evidence that they did not receive plaintiff's discovery
10 requests until June 11, 2007. For that reason, plaintiff's motion to compel and for sanctions will
11 be denied. The August 3, 2007 deadline for completion of discovery set in this court's April 12,
12 2007 scheduling order notwithstanding, defendants will be directed to respond within forty-five
13 days from the date of this order to the discovery requests they received on June 11, 2007.

14 In accordance with the above, IT IS HEREBY ORDERED that:

- 15 1. Plaintiff's June 5, 2007 motion to compel and for sanctions is denied;
16 2. Within forty-five days from the date of this order defendants shall serve
17 responses to the discovery requests they received from plaintiff on June 11, 2007.

18 DATED: August 15, 2007.

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21 UNITED STATES MAGISTRATE JUDGE